

Amendment
Serial No. 10/598, 025

Docket No. NL 040228US1

REMARKS

The Notice of Non-Compliant Amendment mailed November 15, 2009 has been reviewed and reconsideration of the above-identified application in view of the amendments and following remarks, is respectfully requested

Claims 1-18, 20, 21 and 23 are pending and stand rejected.

Claims 1, 11, 13, 14, 15, 16, 17, 18, 20, 21 and 23 have been amended.

Claims 1, 11, 13, 14, 15, 16, 17, 18, 20, 21 and 23 are independent claims.

In response to the Notice of Non-Compliant Amendment, dated December 15, 2009, applicant submits a full set of claims, as previously submitted in Applicant's prior response, including correction to the defect noted in the Notice of Non-Compliant Amendment – i.e., claim 23 includes a claim status of "previously presented" rather than "currently amended."

Pursuant to the instructions provided in Section 2 "TIME PERIODS FOR FILING A REPLY TO THIS NOTICE," in the Notice of Non-Compliant Amendment, applicant submits, herein, only that section of the previously filed response (i.e., the Claims section) found to be in a form not in compliance with the Rules and Practices of the US Patent Office. .

In order to advance the prosecution of the matter, applicant respectfully requests that any additional errors in form that do not alter the substantive nature of the arguments presented in the Office Action Response filed in November 17, 2009 be transmitted telephonically to the applicant's representative so that such errors may be quickly resolved or pursuant to MPEP 714.03 be entered into the record to avoid continued delay of the prosecution of this matter any further.

MPEP 714.03 affords the Examiner the discretion, pursuant to 37 CFR 1.135 (c), to enter into the record a bona fide attempt to advance the application that includes minor errors in form.

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"[a]n Examiner may treat an amendment not fully responsive to a non-final Office Action by: (A) accepting the amendment as an adequate reply to the non-final Office action to avoid abandonment ... (B) notifying the applicant that the reply must be completed... (C) setting a new time period for applicant to complete the reply ...

The treatment to be given to the amendment depends upon:

(A) whether the amendment is bona fide; (B) whether there is sufficient time for applicant's reply ... (C) the nature of the deficiency.

Where an amendment substantially responds to the rejections, objections or requirements in a non-final Office action (and is bona fide attempt to advance the application to final action) but contains a minor deficiency (e.g., fails to treat every rejection, objection or requirement), the examiner may simply act on the amendment and issue a new (non-final or final) Office action. The new Office action may simply reiterate the rejection, objection or requirement not addressed by the amendment (or otherwise indicate that such rejection, objection or requirement is no longer applicable).

This course of action would not be appropriate in instances in which an amendment contains a serious deficiency (e.g., the amendment is unsigned or does not appear to have been filed in reply to the non-final Office action)..."

Applicant's representative believes that the Notice of Non-Compliant Amendment was issued for what amounts to an error in the status of claim 23, which, from the underlining in the claim, clearly shows the claim to be in amended form and could have been accepted and entered into the record as such error was both minor in nature and does not interfere with or alter the evaluation of the scope of the claims on the merits.

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However, if the Examiner believes that such minor errors in form cannot be entered into the record, then the Examiner is invited to contact applicant's representative at the telephone number listed below to resolve such procedure issues.

No fees are believed necessary for the timely filing of this paper.

Respectfully submitted,
Michael E. Belk. Reg. No. 33357

Date: December 30, 2009

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CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being
☒ Transmitted by facsimile to 571 273 8300;
☐ Placed with the US Postal Service with First Class postage attached to the address indicated above;
on December 30, 2009.

Carl A. Giordano
Print Name

/Carl A. Giordano/
Signature

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